

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

KELLY FALCON,

Plaintiff,

v.

SCOTTSDALE INSURANCE COMPANY, an
Arizona company, ANDRE-ROMBERG
INSURANCE AGENCY, INC., a
Washington corporation; COCHRANE
& COMPANY, a Division of COCHRANE
AGENCY, INC., a Washington
corporation,

Defendants.

No. CV-06-122-FVS

ORDER GRANTING MOTION TO
REMAND

BEFORE THE COURT is Plaintiff's Motion to Remand and Objection to Removal. (Ct. Rec. 3). Plaintiff is represented by Amos Hunter. Defendants Scottsdale Insurance Company and Cochrane & Company are represented by Randall Adams. Defendant Andre-Romberg Insurance Agency, Inc., is represented by Edward Johnson.

BACKGROUND

This action stems from a fire at the Plaintiff's place of business for which he had procured insurance through Scottsdale Insurance Company ("Scottsdale"). Because Plaintiff was convicted of arson, Scottsdale refused to pay on the insurance policy. Plaintiff, a Washington resident, brought suit against Scottsdale, an Arizona resident, in Spokane County Superior Court for negligence, breach of contract, insurance bad faith, and violation of the Washington

1 Consumer Protection Act. (Ct. Rec. 2). On April 25, 2006, Scottsdale
2 removed this matter to federal court pursuant to 28 U.S.C. §§ 1441(b)
3 and 1332. At the time of removal, the Court had jurisdiction over
4 this action based on diversity of citizenship.

5 On May 10, 2006, before Scottsdale filed an Answer to Plaintiff's
6 Complaint, Plaintiff filed his first Amended Complaint, naming two
7 additional Defendants: Andre-Romberg Insurance Agency, Inc. ("Andre-
8 Romberg") and Cochrane & Company, Plaintiff's insurance agent and
9 broker, respectively. Plaintiff asserts claims for negligence, breach
10 of contract, insurance bad faith, and violation of the Washington
11 Consumer Protection Act against Andre Romberg. (Ct. Rec. 5).
12 Plaintiff asserts claims for negligence and breach of contract against
13 Cochrane & Company. *Id.* Plaintiff now moves to remand this action to
14 state court for lack of complete diversity.

15 **LEGAL STANDARD**

16 After a case has been removed to federal court, if a plaintiff
17 seeks to join a defendant whose joinder would destroy complete
18 diversity, the district court has discretion to deny the joinder, or
19 allow the joinder and remand the case to state court. 28 U.S.C. §
20 1447(e). In this circumstance, section 1447(e) conflicts with Federal
21 Rule of Civil Procedure 15(a), which permits a plaintiff to amend his
22 complaint without leave of the court "before a responsive pleading is
23 served." The Court, however, determines the proper standard for
24 deciding whether to allow post-removal joinder of a diversity-
25 destroying defendant is set forth in 28 U.S.C. § 1447(e). *See Clinco*
26 *v. Roberts*, 41 F.Supp.2d 1080, 1088 (C.D.Cal. 1999) (explaining

1 rationale for applying section 1447(e) standard to Rule 15(a)
2 amendment that destroys complete diversity); *accord IBC Aviation*
3 *Servs., Inc. v. Compania Mexicana de Aviacion, S.A. de C.V.*, 125
4 F.Supp.2d 1008, 1011 (N.D.Cal. 2000) (recognizing that diversity-
5 destroying amendment is analyzed under section 1447(e) and requires
6 higher scrutiny than does amendment generally); *Winner's Circle of Las*
7 *Vegas, Inc. v. AMI Franchising, Inc.*, 916 F.Supp. 1024 (D.Nev. 1996);
8 *see also Mayes v. Rapoport*, 198 F.3d 457, 461 n. 11 (4th Cir. 1999)
9 (recognizing that section 1447(e) conflicts with Rule 15(a) under
10 certain circumstances, but holding that a district court has the
11 authority to reject a post-removal joinder that implicates 28 U.S.C.
12 § 1447(e), even if the joinder was permitted without leave of the
13 court under Rule 15(a)).

14 **DISCUSSION**

15 Under section 1447(e), the decision to permit joinder of a
16 defendant that destroys diversity jurisdiction is left to the sound
17 discretion of the district court. *Newcombe v. Adolf Coors Co.*, 157
18 F.3d 686, 691 (9th Cir. 1998). District courts in the Ninth Circuit
19 have fashioned a list of several factors which are used in the
20 analysis of joinder pursuant to section 1447(e). *IBC Aviation Servs.*,
21 125 F.Supp.2d at 1011 (discussing cases). The factors generally
22 considered include

23 (1) whether the party sought to be joined is needed for just
24 adjudication and would be joined under Federal Rule of Civil
25 Procedure 19(a); (2) whether the statute of limitations
26 would preclude an original action against the new defendants
in state court; (3) whether there has been unexplained delay
in requesting joinder; (4) whether joinder is intended
solely to defeat federal jurisdiction; (5) whether the
claims against the new defendant appear valid; and (6)

1 whether denial of joinder will prejudice the plaintiff.
2 *Id.* (internal citations omitted).

3 1. Just Adjudication and Fed.R.Civ.P. 19

4 First, Federal Rule of Civil Procedure Rule 19(a) requires
5 joinder of persons whose absence would preclude the grant of complete
6 relief, or whose absence would impede their ability to protect their
7 interests or would subject any of the parties to the danger of
8 inconsistent obligations. A necessary party under Rule 19(a) is a
9 person "having an interest in the controversy, and who ought to be
10 made [a party], in order that the court may act on that rule which
11 requires it to decide on, and finally determine the entire
12 controversy, and do complete justice, by adjusting all the rights
13 involved in it." *CP Nat. Corp. v. Bonneville Power Admin.*, 928 F.2d
14 905, 912 (9th Cir. 1991) (citation and internal quotations omitted).
15 This standard is met when failure to join will lead to separate and
16 redundant actions. *Id.* Although courts should consider whether a
17 party sought to be joined after removal would meet the standard for a
18 necessary party, amendment under section 1447(e) is a less restrictive
19 standard than for joinder under Rule 19(a). *IBC Aviation Servs.*, 125
20 F.Supp.2d at 1012; *see Mayes*, 198 F.3d. at 462 (stating that Rule
21 19(a) does not control the issue of joinder of a diversity-destroying
22 defendant because under section 1447(e) the decision to permit joinder
23 is left to the sound discretion of the district court). Courts
24 prevent joinder of a diversity-destroying defendant where the
25 defendant is only tangentially related to the cause of action or would
26 not prevent complete relief. *Id.*; *see e.g., Red Buttons v. Nat'l*

1 *Broadcasting Co.*, 858 F.Supp. 1025, 1027 (C.D.Cal. 1994) (disallowing
2 amendment to add non-diverse defendants who were not involved with the
3 production alleged to be defamatory).

4 Here, Plaintiff purchased a commercial insurance policy from
5 Scottsdale, through its agent, Andre-Romberg, via a broker, Cochrane &
6 Company. Plaintiff alleges one of the primary issues in this case
7 concerns the communication between all of these parties. Scottsdale
8 argues this case primarily entails an issue of contract interpretation
9 and contends the factual predicate of the new claims against Andre-
10 Romberg and Cochrane & Company are entirely different from that
11 underlying the claims against Scottsdale. Plaintiff's Amended
12 Complaint, however, asserts individual claims for negligence and
13 breach of contract against all three defendants. Further, Plaintiff
14 alleges his claims against all Andre-Romberg and Cochrane & Company
15 arise out of the same transaction from which Plaintiff's claims
16 against Scottsdale arise. Plaintiff also alleges each of the named
17 defendants may be jointly liable to Plaintiff.

18 Preventing Plaintiff from filing his Amended Complaint may hinder
19 the Defendants from asserting their rights against each other and
20 impede their ability to protect their interests if they are jointly
21 and severally liable. Although Andre-Romberg and Cochrane & Company
22 may not be necessary parties whose joinder is required under Rule
23 19(a), the allegations in the Complaint indicate significant
24 involvement of the new Defendants in the occurrence giving rise to
25 Plaintiff's causes of action. Courts have approved discretionary
26 joinder where there is a high degree of involvement by the defendant

1 in the occurrences that gave rise to the plaintiff's cause of action.
2 See. e.g., *Desert Empire Bank v. Ins. Co. of N. America*, 623 F.2d
3 1371, 1376, 1373-74 (9th Cir. 1980) (permitting joinder of an insurer
4 who denied the existence of an insurance contract, so that plaintiff
5 could pursue counts of fraud or negligent misrepresentation). From
6 the face of Plaintiff's Amended Complaint, it appears Andre-Romberg
7 and Cochrane & Company are not simply tangentially related to
8 Plaintiff's causes of action. The Court concludes this factor weighs
9 in favor of permitting the joinder of Defendants Andre-Romberg and
10 Cochrane & Company.

11 2. Statute of Limitations

12 Plaintiff does not argue a new action against Andre-Romberg and
13 Cochrane & Company would be time-barred. Thus, this factor does not
14 necessarily weigh in favor of permitting Plaintiff to join non-diverse
15 defendants. See *Clinco*, 41 F.Supp.2d at 1083; *Boon v. Allstate Ins.*
16 *Co.*, 229 F.Supp.2d 1016, 1023 (C.D.Cal. 2002); but see *IBC Aviation*
17 *Servs.*, 125 F.Supp.2d at 1012 (permitting joinder of non-diverse
18 defendants under section 1447(e) even though a separate action would
19 not have been time-barred because requiring a plaintiff to litigate
20 essentially the same issues in two forums would be a waste of judicial
21 resources and risks inconsistent results).

22 3. Timeliness

23 When determining whether to allow a plaintiff to amend his
24 complaint to add a non-diverse party, courts consider whether the
25 amendment was attempted in a timely fashion. See *IBC Aviation Servs.*,
26 125 F.Supp.2d at 1012 (citing cases). In the instant matter,

1 Plaintiff filed his Amended Complaint less than two weeks after this
2 action was removed. The Court finds Plaintiff acted in a timely
3 fashion and did not unreasonably delay in filing his Amended
4 Complaint. See e.g., *Clinco* 41 F.Supp2d at 1083 (finding amendment
5 less than six weeks after removal reasonable time); *Boon*, 229
6 F.Supp.2d at 1023 (finding amendment less than one month after removal
7 reasonable time); cf. *Lopez v. General Motors Corp.*, 697 F.2d 1328,
8 1332 (9th Cir. 1983) (holding a delay of six months after removal and
9 just four days prior to the hearing on a motion for summary judgment
10 was "too late" for plaintiff to move to amend complaint to add new
11 parties thereby defeating diversity jurisdiction). The Court
12 determines the timing of Plaintiff's Amended Complaint weighs in favor
13 of permitting the joinder of Defendants Andre-Romberg and Cochrane &
14 Company.

15 4. Motive for Joinder

16 When the presence of a new defendant will defeat the Court's
17 diversity jurisdiction and require a remand to state court, the Court
18 "should look with particular care" at the motive of the plaintiff
19 seeking the joinder. *Desert Empire Bank*, 623 F.2d at 1376. Although
20 Scottsdale contends Plaintiff seeks to join Andre-Romberg and Cochrane
21 & Company simply to destroy diversity, Scottsdale has not pointed to
22 any evidence suggesting Plaintiff had an improper motive in filing his
23 Amended Complaint. The Court declines to impute an improper motive to
24 Plaintiff simply because Plaintiff seeks to add a non-diverse
25 defendant post-removal. See e.g., *IBC Aviation Servs.*, 125 F.Supp.2d
26 at 1012. In light of Plaintiff's allegations in his Amended

1 Complaint, the Court finds Plaintiff's desire to join Andre-Romberg
2 and Cochrane & Company as defendants to be reasonable and justified.

3 5. Validity of Claims

4 The Court recognizes, and Scottsdale does not argue otherwise,
5 that Plaintiff may have valid claims against Andre-Romberg and
6 Cochrane & Company. Thus, this factor weighs in favor of permitting
7 joinder of these non-diverse Defendants.

8 6. Possible Prejudice

9 Preventing Plaintiff from joining non-diverse Defendants Andre-
10 Romberg and Cochrane & Company in this action would require Plaintiff
11 to choose between pursuing a parallel action in state court involving
12 redundant litigation arising out of the same facts and legal issues,
13 or foregoing his potential claims against Andre-Romberg and Cochrane &
14 Company. Further, requiring Plaintiff to litigate essentially the
15 same issues in two forums would be a waste of judicial resources and
16 risks inconsistent results. Moreover, allowing the amendment to
17 Plaintiff's Complaint will not prejudice Scottsdale because discovery
18 has not yet begun and a Scheduling Order has not yet been established
19 by the Court. See e.g., *IBC Aviation Servs.*, 125 F.Supp2d at 1013
20 (finding no prejudice towards defendant when discovery had yet to
21 begin). This factor weighs in favor of permitting the joinder of non-
22 diverse Defendants Andre-Romberg and Cochrane & Company.

23 **CONCLUSION**

24 The Court finds the joinder of non-diverse Defendants Andre-
25 Romberg and Cochrane & Company is warranted because they are more than
26 tangentially related to Plaintiff's claims, amendment will conserve

1 judicial resources and reduce the risk of inconsistent results,
2 Plaintiff's filing of his Amended Complaint was not unreasonably
3 delayed, the claims against Andre-Romberg and Cochrane & Company
4 appear valid, and amendment will not prejudice the parties. The
5 equities favor allowing joinder of Defendants Andre-Romberg and
6 Cochrane & Company. Accordingly,

7 **IT IS HEREBY ORDERED** that Plaintiff's Motion to Remand (Ct. Rec.
8 **3)** is **GRANTED**.

9 **IT IS SO ORDERED.** The District Court Executive is hereby
10 directed to enter this order, furnish copies to counsel, and **CLOSE THE**
11 **FILE.**

12 **DATED** this 21st day of August, 2006.

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14 s/ Fred Van Sickle
Fred Van Sickle
United States District Judge
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